

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Matter of BKP Harrison, LLC v. Town/Vil. of Harrison

2026 NY Slip Op 02649 (N.Y. Ct. App. 2026) · No. 2022-07063 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department affirmed a judgment that annulled the Town/Village of Harrison Planning Board's denial of an amended site plan application for a restaurant with a drive-through. The court held that the denial was arbitrary and capricious because it relied on speculative traffic concerns, subjective delivery-hour concerns, an improper zoning interpretation, and a study not disclosed to the applicant.

OPINION

Matter of BKP Harrison, LLC v. Town/Vil. of Harrison 2026 NY Slip Op 02649

PER CURIAM.

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2026 NY Slip Op 02649

April 29, 2026

Appellate Division, Second Department

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In the Matter of BKP Harrison, LLC, respondent,
v
Town/Village of Harrison, et al., appellants.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 29, 2026

2022-07063, (Index No. 56867/22)

Mark C. Dillon, J.P.
Linda Christopher
Barry E. Warhit
Carl J. Landicino, JJ.

Phillip A. Grimaldi, Jr., Hawthorne, NY, for appellants.
Cuddy & Feder LLP, White Plains, NY (Brendan M. Goodhouse of counsel), for respondent.

DECISION & ORDER

In a proceeding pursuant to CPLR article 78 to review a determination of the Town/Village of Harrison Planning Board dated January 25, 2022, which, after a hearing, denied the petitioner's application

for an amended site plan approval, the Town/Village of Harrison and the Town/Village of Harrison Planning Board appeal from a judgment of the Supreme Court, Westchester County (Susan Cacace, J.), dated August 17, 2022. The judgment granted the petition, annulled the determination, and directed the Town/Village of Harrison Planning Board to grant the application for an amended site plan approval.

ORDERED that the judgment is affirmed, without costs or disbursements.

The petitioner submitted an application to the Town/Village of Harrison Planning Board (hereinafter the planning board) for an amended site plan approval to replace an existing restaurant with a new restaurant and drive-through. After meetings and public hearings, in a determination dated January 25, 2022, the planning board denied the application. The petitioner commenced this proceeding pursuant to CPLR article 78 to review the determination. In a judgment dated August 17, 2022, the Supreme Court granted the petition, annulled the determination, and directed the planning board to grant the application. This appeal ensued.

"A local planning board has broad discretion in deciding applications for site plan approvals, and judicial review is limited to determining whether the board's action was illegal, arbitrary and capricious, or an abuse of discretion" (*Matter of 7-Eleven, Inc. v Town of Hempstead*, 205 AD3d 909, 910; *see* CPLR 7803[3]).

Here, the Supreme Court properly concluded that the planning board's determination was arbitrary and capricious and did not have a rational basis in the record. The planning board's determination was based, in part, on speculative predictions that motorists would not obey certain traffic signals and subjective concerns that the petitioner would not honor its commitment to limit deliveries to certain hours. Moreover, even though "[p]lanning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals" (*Matter of Swantz v Planning Bd. of Vil. of Cobleskill*, 34 AD3d 1159, 1160; *see* *Matter of O'Malley v Town of New Windsor Planning Bd.*, 227 AD3d 808, 810), the planning board based its denial, in part, on the conclusion that the petitioner would need a zoning variance for the width of its entrance driveways. Further, the planning board improperly relied on a study it conducted that the petitioner was not made aware of until the planning board referred to it in the determination (*see* *Matter of Bali Two, LLC v Pascale*, 225 AD3d 691, 692; *Matter of Sunset Sanitation Serv. Corp. v Board of Zoning Appeals of Town of Smithtown*, 172 AD2d 755).

Accordingly, the Supreme Court properly granted the petition, annulled the determination, and directed the planning board to grant the application.

DILLON, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur.

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PER CURIAM.

Matter of BKP Harrison, LLC v Town/Vil. of Harrison - 2026 NY Slip Op 02649 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Matter of BKP Harrison, LLC v Town/Vil. of Harrison 2026 NY Slip Op 02649 April 29, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. In the Matter of BKP Harrison, LLC, respondent, v Town/Village of Harrison, et al., appellants. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on April 29, 2026 2022-07063, (Index No. 56867/22) Mark C. Dillon, J.P. Linda Christopher Barry E. Warhit Carl J. Landicino, JJ. Phillip A. Grimaldi, Jr., Hawthorne, NY, for appellants. Cuddy & Feder LLP, White Plains, NY (Brendan M. Goodhouse of counsel), for respondent. [*1] DECISION & ORDER In a proceeding pursuant to CPLR article 78 to review a determination of the Town/Village of Harrison Planning Board dated January 25, 2022, which, after a hearing, denied the petitioner's application for an amended site plan approval, the Town/Village of Harrison and the Town/Village of Harrison Planning Board appeal from a judgment of the Supreme Court, Westchester County (Susan Cacace, J.), dated August 17, 2022. The judgment granted the petition, annulled the determination, and directed the Town/Village of Harrison Planning Board to grant the application for an amended site plan approval. ORDERED that the judgment is affirmed, without costs or disbursements. The petitioner submitted an application to the Town/Village of Harrison Planning Board (hereinafter the planning board) for an amended site plan approval to replace an existing restaurant with a new restaurant and drive-through. After meetings and public hearings, in a determination dated January 25, 2022, the planning board denied the application. The petitioner commenced this proceeding pursuant to CPLR article 78 to review the determination. In a judgment dated August 17, 2022, the Supreme Court granted the petition, annulled the determination, and directed the planning board to grant the application. This appeal ensued. "A local planning board has broad discretion in deciding applications for site plan approvals, and judicial review is limited to determining whether the board's action was illegal, arbitrary and capricious, or an abuse of discretion" (Matter of 7-Eleven, Inc. v Town of Hempstead , 205 AD3d 909, 910 ; see CPLR 7803[3]). Here, the Supreme Court properly concluded that the planning board's determination was arbitrary and capricious and did not have a rational basis in the record. The planning board's determination was based, in part, on speculative predictions that motorists would not obey certain traffic signals and subjective concerns that the petitioner would not honor its commitment to limit deliveries to certain hours. Moreover, even though "[p]lanning boards are

without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals" (Matter of Swantz v Planning Bd. of Vil. of Cobleskill , 34 AD3d 1159, 1160 ; see Matter of O'Malley v Town of New Windsor Planning Bd. , 227 AD3d 808 , 810), the [*2] planning board based its denial, in part, on the conclusion that the petitioner would need a zoning variance for the width of its entrance driveways. Further, the planning board improperly relied on a study it conducted that the petitioner was not made aware of until the planning board referred to it in the determination (see Matter of Bali Two, LLC v Pascale , 225 AD3d 691 , 692; Matter of Sunset Sanitation Serv. Corp. v Board of Zoning Appeals of Town of Smithtown, 172 AD2d 755). Accordingly, the Supreme Court properly granted the petition, annulled the determination, and directed the planning board to grant the application. DILLON, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.